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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 321

SHREVEPORT ENGRAVING COMPANY, INC.
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR REHEARING IN RE: SHREVEPORT ENGRAVING COMPANY APPLYING FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

FRANK J. LOONEY,
Attorney for Petitioner

BEN F. ROBERTS
Of Counsel:

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In this case now comes the Shreveport Engraving Company, petitioner herein and defendant in the District Court and petitions this court to grant a rehearing on the petition for a writ of Certiorari heretofore filed in above numbered and entitled cause and denied by this court on October 16, 1944, and shows the following reasons:

I

Since the decision of this case by the Circuit Court of Appeals for the Fifth Circuit, the United States has prose-

cuted in the District Court of the United States for the Northern District of Illinois, the Turner Dairy Co. and one John Jurca for violating a directive issued under the War Food Administration.

After a plea of guilty, a motion to vacate was filed.

We here quote in full the opinion of Judge Barnes granting "the motion to vacate the judgment and the sentences imposed:"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA *vs.* TURNER DAIRY COMPANY and JOHN JURCA	Information No. 44 CR 70.

MEMORANDUM

The defendants, having previously submitted to the jurisdiction of this court and recognized the validity of the charges against them by entering pleas of guilty, now attempt, after sentence has been passed upon them, to attack the court's jurisdiction and the legality of the charges which they have admitted, through a motion to vacate the judgment entered and the sentences imposed.

The defendants make a number of points which the court thinks are without merit, but their challenge of the re-delegation by the War Food Administrator to the Direc-

tor of Food Distribution of authority to issue Food Distribution Order No. 79.7, gives the court pause. The court is of the opinion that justice will be done if a reviewing court is given an opportunity to pass upon the validity of that re-delegation of power before any citizen is required to go to jail for violation of Order No. 79.7.

Accordingly, the motion to vacate the judgment and sentences imposed is granted.

The court will assume that the defendants have demurred to the complaint, and the court sustains that demurrer and will dismiss the complaint.

Appropriate orders may be made at the opening of court on Monday, October 2, 1944.

(Signed): BARNES,
Judge.

September 27, 1944.

It is submitted that the present case is even stronger in that there is no evidence of a redelegation of the power to make rules and regulations, a power vested in the President by subdivision 8 of the Second War Powers Act, and not by Section 2(a) cited in government brief P. 4 filed in opposition to Petition for Certiorari.

It is further submitted that the cases of United States vs. George 228 U. S. 14 and Cudahy Packing Co. vs. Holland 315 U. S. 357, were of influence in securing the vacation of the plea of guilty and its effects, and especially the late language of the court in the latter case, p. 361: "a construction of the Act which would thus permit the administrator

to delegate all his duties, including those involving administrative judgment and discretion which the Act has in terms given only to him, can hardly be accepted unless plainly required by its words."

II

That petitioner herein is entitled to a hearing in this court inasmuch as the conviction in its case was not under the terms of a statute but of a mere directive of an administrative bureau subordinate official, which directive deprived it of the right to use in its own business material essential to the operation of its business; which material, to-wit, copper, was then and previous to the issuing of the directive, had been owned by defendant, and was susceptible of use by any other to whom it might be sold, even though that other were in a competing business, if that other were within the terms of this directive known as M-9-C, or had been granted the favor of using more copper than M-9-C itself purported to give defendant. Petitioner further shows that "use" has been recognized as "an attribute of ownership" by this court in Curtin vs. Benson S. 22 No. 78.86.

III

That petitioner herein is entitled to have this case heard by the Supreme Court of the United States, because the directive M-9-C, by prohibiting the use of the expensive copper sheets, prevented the conversion of these into "scrap" copper, which scrap became immediately subject to taking over by the United States for defense purposes whereas in the original expensive state no provision was made for purchase, hence none for defense use of this highly polished copper plate.

Petitioner submits that any regulation which prevented the use of copper plates which use would make the copper available for defense purposes was not only unreasonable but harmful to the nation at war.

IV

Petitioner shows that the intolerant attitude of the District Judge prevented a fair trial.

> That the taunting question, "You knew there was a war going on, didn't you?" made to the president and witness of the defendant company, not once, but twice, was intended to present the witness and through him, the defendant, to the jury as a person indifferent to the interests of his country at war, whereas the action of the company, in using the polished copper plate and turning it into scrap was evidence of the helpful knowledge of defendants president that he not only knew there was " a war on" but was serving the interests of this country at war.
>
> And that the interjection of the judge made categorically and hostilely, "This is a sub rosa defense here," threw suspicion on the defendant, its president and its counsel, in such an arbitrary and intolerant way as to cause wonder that intolerance in a judge was not included in Chief Justice Marshall's famous dectum: "The greatest curse an angry and indignant heaven ever inflicted on an ungrateful and sinning people is an ignorant, a corrupt or a dependent judiciary."

Petitioner submits that a fair trial means a fair judge presiding.

Wherefore this Honorable Court is requested to review the Petition for Certiorari and the Statute known as Section 2(a) and 8 of the Second War Powers Act, the direc-

tive M-9-C and the evidence as to the action and expressions of the District Judge and to grant a rehearing herein, or upon such reconsideration grant the writ of Certiorari hereinbefore prayed for.

FRANK J. LOONEY,
Attorney for Petitioner.

I certify that this motion is made in good faith and not merely to purposes for delay, this day of October, 1944.

FRANK J. LOONEY,
Attorney for Petitioner.

BEN F. ROBERTS,
Of Counsel.